

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

CORTEZ L. BAREFIELD,

Petitioner,

v.

CRIMINAL ACTION NO. 2:06-cr-00055-02

CIVIL ACTION NO. 2:08-cv-946

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION & ORDER

Pending before the court is a Motion by the petitioner to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Dockets 540 & 544]. This matter was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation (“PF&R”) for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner’s Motion and dismiss this matter from the docket.

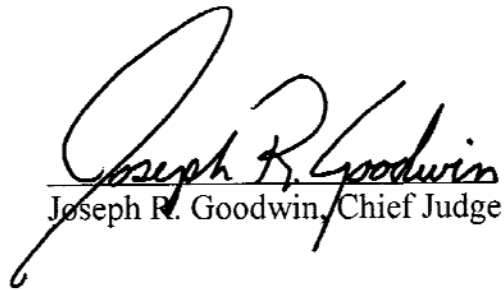
The petitioner timely filed written objections to the Magistrate Judge’s findings of fact and recommendation. Having reviewed the petitioner’s objections *de novo*, the court **FINDS** that they ultimately are without merit. The petitioner argues that his indictment should have “state[d] the statutory language” from 21 U.S.C. 841(b)(1)(A)(ii). (Obj. 2.) But the petitioner “has no authority for that proposition, and the [c]ourt is aware of none. . . . The [c]ourt finds that the elements of the offense under 21 U.S.C. §§ 841(a)(1) and 846 are set forth in the indictment in this case.” *Collins v. United States*, 2006 WL 858975, at *5 (D.S.D. 2006) (upholding an indictment against an analogous

challenge). The court agrees with and adopts the thorough analysis of the Magistrate Judge. The court **DENIES** the petitioner's Motion [Dockets 540 & 544].

The court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The Clerk is **DIRECTED** to forward copies of this written opinion and order to all counsel of record and any unrepresented parties.

ENTER: December 18, 2009


Joseph R. Goodwin, Chief Judge